

Decision 05-08-016 August 25, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of SOUTHERN CALIFORNIA GAS COMPANY for authority to update its gas revenue requirement and base rates. (U 904 G)

Application 02-12-027
(Filed December 20, 2002)

Application of SAN DIEGO GAS & ELECTRIC COMPANY for authority to update its gas and electric revenue requirement and base rates. (U 902-M)

Application 02-12-028
(Filed December 20, 2002)

Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Service and Facilities of Southern California Gas Company and San Diego Gas & Electric Company.

Investigation 03-03-016
(Filed March 13, 2003)

**OPINION GRANTING INTERVENOR COMPENSATION
TO THE UTILITY REFORM NETWORK FOR
SUBSTANTIAL CONTRIBUTIONS TO DECISION 04-12-015**

1. Summary

This decision awards The Utility Reform Network (TURN) \$296,838.39 in compensation for its substantial contributions to Decision (D.) 04-12-015.

2. Background

In D.04-12-015 the Commission adopted base electric and gas revenue requirements for Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) in the consolidated applications for Test Year 2004 Cost of Service. The critical issue in these proceedings was to ensure that the companies receive a reasonable level of revenue for monopoly

distribution services. SoCalGas filed Application (A.) 02-12-027 and SDG&E filed A.02-12-028 on December 20, 2002, respectively, for authority to update their gas and electric revenue requirements and base rates. SoCalGas requested an approximate \$130 million increase in natural gas distribution revenues for Test Year 2004 and SDG&E requested an approximate \$58.9 million increase in electric distribution revenues¹ and \$21.6 million increase in natural gas distribution revenues for Test Year 2004. In adopting a settlement agreement, with modifications, the Commission authorized \$1.457 billion in natural gas distribution revenues for Test Year 2004 for SoCalGas. The Commission also authorized SDG&E \$754.763 million in electric distribution revenues and \$204.721 million in natural gas distribution revenues for Test Year 2004.

These applications were not filed in conformance with the Commission's rate case processing plan. There were in conformance with specific exemptions granted as a part of previously adopted incentive ratemaking mechanisms. Prehearing conferences (PHCs) were held on February 19, 2003, March 7, 2003, and September 26, 2003. Public participation hearings were held in August and September 2003, in SoCalGas' service territory in Van Nuys, El Monte, Carson, and San Bernardino, and in SDG&E's service territory in San Diego and San Clemente. Twenty days of evidentiary hearings on Phase 1 distribution service revenue requirements were held, beginning October 7, 2003. Testimony was received in the evidentiary hearings from numerous witnesses, and over 300 exhibits were received in evidence.² D.03-12-057 granted interim rate relief to

¹ This included the effects of nuclear costs after the termination of the Incremental Cost Incentive Plan (ICIP).

² Without separately counting errata, SoCalGas and SDG&E sponsored 150 exhibits of direct and rebuttal testimony; Office of Ratepayer Advocates (ORA), 33 direct and

SoCalGas and SDG&E³ by establishing memorandum accounts to track any eventual difference in current rates and any increase or decrease adopted by this decision for Test Year 2004.

Settling parties filed opening briefs on January 20, 2004. On February 4, 2004, non-settling parties filed opening briefs, and all parties filed reply briefs on February 19, 2004. TURN participated in the negotiations, signed the settlement with SoCalGas, and filed in support of the settlement on January 20, 2004.

3. Requirements for Awards of Compensation

The intervenor compensation program, enacted in Pub. Util. Code §§ 1801-1812, requires California jurisdictional utilities to pay the reasonable costs of an intervenor's participation if the intervenor makes a substantial contribution to the Commission's proceedings. The statute provides that the utility may adjust its rates to collect the amount awarded from its ratepayers. (Subsequent statutory references are to the Public Utilities Code unless otherwise indicated.)

All of the following procedures and criteria must be satisfied for an intervenor to obtain a compensation award:

1. The intervenor must satisfy certain procedural requirements including the filing of a sufficient notice of intent (NOI) to claim compensation within 30 days of the prehearing conference (or in special circumstances, at other appropriate times that we specify). (§ 1804(a).)

cross-examination exhibits; TURN, 60 direct and cross-examination exhibits and Utility Consumers Action Network (UCAN), 47 direct and cross-examination exhibits.

³ On April 18, 2003, SoCalGas and SDG&E filed a Motion seeking reconsideration of the April 2, 2003 Scoping Memo. The May 22, 2003 Ruling clarified the Scoping memo as appropriate, and D.03-12-057 was necessary to grant the interim relief request.

2. The intervenor must be a customer or a participant representing consumers, customers, or subscribers of a utility subject to our jurisdiction. (§ 1802(b).)
3. The intervenor should file and serve a request for a compensation award within 60 days of our final order or decision in a hearing or proceeding. (§ 1804(c).)
4. The intervenor must demonstrate “significant financial hardship.” (§§ 1802(g), 1804(b)(1).)
5. The intervenor’s presentation must have made a “substantial contribution” to the proceeding, through the adoption, in whole or in part, of the intervenor’s contention or recommendations by a Commission order or decision. (§§ 1801(1), 1803(a).)
6. The claimed fees and costs are comparable to the market rates paid to experts and advocates having comparable training and experience and offering similar services. (§ 1806.)

For discussion here, the procedural issues in Items 1-4 above are combined, followed by separate discussions on Items 5 and 6.

4. Procedural Issues

The first PHC in this matter was held on February 19, 2003. TURN filed its timely NOI on March 10, 2003, asserting financial hardship. On March 14, 2003, Administrative Law Judge (ALJ) Long ruled that TURN is a customer under the Public Utilities Code and meets the financial hardship condition. TURN filed its request for compensation on February 7, 2005, within 60 days of D.04-12-015. No party opposes this request. TURN has satisfied all the procedural requirements necessary to make its request for compensation.

5. Substantial Contribution

In evaluating whether a customer made a substantial contribution to a proceeding we look at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural

recommendations put forward by the customer? (*See* §1802(i).) Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision? (*See* §§1802(i) and 1802.5.) As described in §1802(i), the assessment of whether the customer made a substantial contribution requires the exercise of judgment.

“In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.” (D.98-04-059, 79 CPUC2d, 628 at 653.)

Should the Commission not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order. With this guidance in mind, we turn to the claimed contributions TURN made to the proceeding.

TURN asserts it participated actively by submitting testimony from three expert witnesses from JBS Energy, Inc. (JBS), cosponsoring testimony from two expert witnesses from Overland Consulting, sponsoring testimony from in-house expert witness Michel Florio, conducting cross-examination at evidentiary hearings, and submitting various pleadings. TURN provided analyses and recommendations in many areas related to the capital and expense portions of the revenue requirement calculation. TURN focused primarily on SoCalGas, while working closely with the UCAN, which focused on SDG&E. TURN and UCAN shared the costs of Overland Consulting.

TURN and others settled with SoCalGas on the overall test year revenue requirement. There was another Settlement for SDG&E, without TURN's (or UCAN's) participation. The settlement agreements for both SoCalGas and SDG&E were included as a part of D. 04-12-015 to adopt ratemaking settlements for Test Year 2004. TURN also addressed several issues related to SDG&E due to the utilities' common holding company, such as information technology and working cash. TURN briefed these litigated issues, because parties were directed by the ALJ to file briefs on the litigated issues as if there were no proposed settlements.

TURN asserts that Rule 51.9 precludes it from disclosure of settlement discussions, and while any settlement is a negotiated compromise, TURN suggests that its contributions can be inferred by comparing SoCalGas' requested base margin revenues with those adopted in the Settlement Agreement. The Settlement Agreement was filed after submission of expert testimony and after evidentiary hearings. TURN suggests that the settled outcome, as adopted in D. 04-12-015, can be compared to the recommendations and analyses contained in parties' expert testimony.

The SoCalGas total base margin revenue requirement (\$1.457 billion) proposed in the Settlement Agreement was more than \$70 million less than SoCalGas' end-of-hearings litigation position. For SoCalGas, TURN's litigated positions included over \$31 million of Operation & Maintenance (O&M) expense reductions and over \$90 million of capital cost reductions in addition to reductions recommended by the ORA.⁴

⁴ Request, p. 3. Reductions to capital costs reduce rate base, which in turn reduces the revenue requirement, for depreciation and return on capital.

TURN provides a list of issues⁵ that it litigated in the proceeding, and which are reflected in the SoCalGas settlement:

- O&M expenses for freeway/franchise are reduced by \$436,000, as proposed by TURN. (Sec. III. H; TURN Opening Brief, p. 37);
- O&M for main leak repairs is reduced by \$1.5 million, as proposed by TURN. (Sec. III.H; TURN Opening Brief, p. 33-36);
- O&M for customer assistance expenses is reduced by over \$7.5 million and reflects “acceptance of a significant portion, but not all, of ORA’s and TURN’s recommended adjustments.” (Sec. III.J.)
- A portion of the reduction for Customer Assistance expenses is due to SoCalGas’ agreement that “DSM costs should not be recovered in base rates,” as recommended by TURN’s witness Nahigian. (Sec. III.J; Exh. 503, p. 2-3.)
- Employee benefit costs are reduced by \$2.3 million to “resolve concerns ORA and TURN raised regarding the appropriateness of including in rates certain benefits such as executive life insurance, employee recognition, etc.” (Sec. III.K.) Some of the benefits issues were raised in the testimony of William Marcus. (Exh. 501, p. 33-35.)
- RD&D expenses are made subject to a one-way balancing account. (Sec. III.K.)
- Rate base is reduced by approximately \$70 million, reflecting a reduction of about \$35 million in working cash (TURN had proposed a reduction of approximately \$87 million) and a reduction of about \$35 million in capital expenditures;
- A life cycle of four years for personal computers is adopted, reflecting “a compromise between SoCalGas’

⁵ Request, pp. 5-7.

position of three years and TURN's position of five years.”
(Sec. III.W);

- Taxes – TURN addressed income taxes and property taxes in our prepared testimony. (Ex. 501, pp. 38-42.) TURN, ORA and SoCalGas subsequently developed an agreed-upon tax revenue requirement covering all tax issues, and resulted in the stipulation now designated as Exhibit 144.

These issues resulted in a settlement substantially different than SoCalGas' original proposal.

With any proceeding as broad as adopting the test year cost of service for major energy utilities like SoCalGas and SDG&E, the parties are likely to spend a significant time in preparation and reviewing the application before identifying areas of specific concern to them. A review of TURN's time records for counsel shows that they were focused and did not spend large periods of time that were not allocated to specific issues. We find that these costs are not excessive and should be compensated.

6. Reasonableness of Requested Compensation

TURN requests \$296,838⁶ for its participation in this proceeding. Included in the request⁷ was the following breakdown:

Request Summary	
TURN Staff	\$234,889.50
Consultants – JBS	57,337.45

⁶ This excludes \$82,500 for TURN's share of the costs for Overland Consulting. These costs were recovered in full by UCAN. Both TURN and UCAN shared the services of Overland Consulting, whose work was applicable to both proceedings, and UCAN filed a request for compensation seeking the entire amount. By letter dated February 9, 2005, TURN acknowledged that UCAN's request should be the vehicle to recover all Overland Consulting costs without duplication of effort in this request and decision.

⁷ Request, pp. 14-15.

Subtotal	\$292,226.95
Travel, Lodging & Meals	\$1,316.38
Copying	2,484.11
Postage	59.33
Lexis Research	441.86
FedEx, Fax & Phone	309.76
Total Request	\$296,838.39

The components of this request must constitute reasonable fees and costs of the customer's preparation for and participation in a proceeding that resulted in a substantial contribution. Thus, only those fees and costs associated with the customer's work that the Commission concludes made a substantial contribution are reasonable and eligible for compensation.

Finally, to assist us in determining the reasonableness of the requested compensation, D.98-04-059 directed customers to demonstrate productivity by assigning a reasonable dollar value to the benefits of their participation to ratepayers. The costs of a customer's participation should bear a reasonable relationship to the benefits realized through their participation. This showing assists us in determining the overall reasonableness of the request. From the various provisions of the Settlement Agreement discussed above, we find that TURN made a substantial contribution to the Settlement saving ratepayers a significant sum. We can therefore find TURN's participation was productive.

Next, we must assess whether the hours claimed for the customer's efforts that resulted in substantial contributions to Commission decisions are reasonable. Based upon TURN's assertion of the time for each subject area, and adjusting for the correct authorized rates, TURN's request is reasonable. TURN provided a comprehensive overview of many issues for SoCalGas and for overlapping issues with SDG&E. Its level of involvement was second only to the much larger team fielded by ORA, and it addressed every major issue. TURN

was a critical participant in the negotiation of the SoCalGas settlement, and as cited by TURN, the Settlement reflects the impact of TURN's litigated positions, resulting in substantial savings for ratepayers.

Rates as Requested by TURN			
Name	Year	Rate	Cites in Request
Hawiger	2003	\$250	D.04-05-048
	2004	\$270	A.02-05-004 (2003 plus 8%)
	2005	\$270	Same as 2004
Goodson	2003	\$190	D.04-12-033
	2004	\$190	Same as 2003
Finkelstein	2004	\$365	D.03-08-041
	2004	\$395	(2003 plus 8%)
	2005	\$395	Same as 2004
Ellington	2003	\$190	D.04-05-050
Florio	2003	\$435	D.04-02-017
Freedman	2003	\$250	D.04-05-050 and D.04-08-042
Marcus	2002	\$175	(1)
	2003	\$185	(1)
	2004	\$195	(2)
Schilberg	2003	\$140	(1)
Nahigian	2003	\$125	(1)
1. TURN generically cites to “prior approval” for JBS. 2. Proposed in A.02-05-004			

TURN documented its claimed hours by presenting a daily breakdown of the hours of its attorneys and analysts, accompanied by a brief description of each activity. The detailed explanation of the hours TURN spent on the proceeding describes the work task with reference to specific issues. Therefore, the hourly breakdown reasonably supports the claim for total hours.⁸

⁸ TURN separated the hours associated with travel and preparation of this compensation request and requests compensation at half the usual hourly rate for this time. It also provided rough percentage allocations that only allows us to broadly allocate labor between specific issues and general litigation.

In determining compensation, we take into consideration the market rates for similar services from comparably qualified persons. All staff and the attorneys for TURN and JBS have existing rates approved by the Commission for work performed in 2003 and 2004. We use those existing rates without further discussion, and TURN seeks to use 2004 rates for minor work in 2005. We will use those rates for this decision only, without setting a precedent for a reasonable rate for 2005 in other proceedings.

We will not normally second guess an adopted rate. In a related decision to compensate UCAN for its contribution in the same proceeding, we adopt rates for JBS. We calculated as necessary new 2004 rates by adjusting the last authorized rates for 2003 by 8%, as provided for in Resolution ALJ-184, dated August 19, 2004. The rates for JBS which differ slightly from those requested by TURN, are consistent with earlier decisions and rates for work performed for UCAN.

Adopted Compensation Rates and Allowances					
Name	Year	Rate	Hours	Allowance	Cite
Hawiger	2003	\$250	209.35	\$52,337.50	D.04-05-048
	2004	\$270	130.50	\$35,235.00	D.05-05-046
	2005	\$270	7.00	\$1,890.00	Same as 2004
Goodson	2003	\$190	101.75	\$19,332.50	D.04-12-033
	2004	\$190	43.75	\$8,312.50	Same as 2003
Finkelstein	2003	\$365	188.75	\$68,893.75	D.03-08-041
	2004	\$395	104.25	\$41,178.75	D.05-03-016
	2005	\$395	1.50	\$592.50	Same as 2004
Ellington	2003	\$190	19.30	\$3,667.00	D.04-05-050
Florio	2003	\$435	7.50	\$3,262.50	D.04-02-017
Freedman	2003	\$250	0.75	\$187.50	D.04-05-050
Marcus	2002	\$175	0.75	\$131.25	D. 03-10-011
	2003	\$185	141.16	\$26,114.60	D. 03-10-011
	2004	\$195	14.91	\$2,907.45	D.05-03-016
Schilberg	2003	\$140	11.36	\$1,590.40	D.03-05-013
Nahigian	2003	\$125	212.75	\$26,593.75	D.03-10-011

Total	\$292,226.95	
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The itemized direct expenses submitted by TURN include costs for travel, photocopying, postage, etc., and total \$4,611.44. The cost breakdown included with the request shows the miscellaneous expenses to be commensurate with the work performed.

TURN also separately identified costs associated with SDG&E's application, \$6,298.75, included within the labor costs for in-house counsel at TURN. These costs are for the separate effort to brief the SDG&E proceeding and are not affected by the minor rate adjustments for JBS. We find these costs reasonable and consistent with the time and effort spent primarily on SoCalGas.

EXPENSE CATEGORY	AMOUNT
Travel, Lodging and meals	\$1,316.38
Copies	\$2,484.11
Postage	\$59.33
Lexis Research	\$441.86
FedEx, Fax and Phone	\$309.76
TOTAL	\$4,611.44

7. Award

We award TURN \$296,838.39 (\$292,226.95 + \$4,611.44) as compensation for its contributions to D.04-12-015. Consistent with previous Commission decisions, we will order that interest be paid on the award amount (at the rate earned on prime, three-month commercial paper, as reported in Federal Reserve Statistical Release H.15) commencing the 75th day after TURN filed its compensation request and continuing until full payment of the award is made.

We remind all intervenors that Commission staff may audit their records related to this award and that intervenors must make and retain adequate

accounting and other documentation to support all claims for intervenor compensation. TURN's records must identify specific issues for which it requested compensation, the actual time spent by each employee or consultant, the applicable hourly rate, fees paid to consultants, and any other costs for which compensation was claimed.

8. Waiver of Comment Period

This is an intervenor compensation matter. Accordingly, as provided by Rule 77.7(f)(6) of our Rules of Practice and Procedure, we waive the otherwise applicable 30-day comment period for this decision.

9. Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Douglas M. Long is the assigned ALJ in these proceedings.

Findings of Fact

1. TURN made a substantial contribution to SDG&E's 2004 test year cost of service application as described herein.
2. TURN requested hourly rates for attorneys and experts that, as adjusted herein, are reasonable when compared to the market rates for persons with similar training and experience.
3. In D.04-12-015 the commission adopted the settlement between TURN and SoCalGas, and other active parties. The settlement agreement addressed all revenue requirement issues.
4. It is reasonable to use hourly compensation rates previously approved for intervenor compensation. Resolution ALJ-184 provides a reasonable adjustment to authorized 2003 rates for 2004.
5. The itemized direct expenses were reasonable and consistent with the scope of TURN's participation in this proceeding.

6. The total of the reasonable compensation is \$296,838.39. The Appendix to the opinion summarizes today's award.

Conclusions of Law

1. TURN has fulfilled the requirements of Pub. Util. Code §§ 1801-1812, which govern awards of intervenor compensation, and is entitled to its claimed compensation, as adjusted herein, incurred in making substantial contributions to D.04-12-015.

2. TURN should be awarded \$296,838.39 for its contribution to D.04-12-015.

3. Per Rule 77.7(f)(6), the comment period for this compensation decision may be waived.

4. This order should be effective today so that TURN may be compensated without further delay.

O R D E R

IT IS ORDERED that:

1. The Utility Reform Network (TURN) is awarded \$296,838.39 as compensation for its substantial contributions to Decision 04-12-015.

2. Within 30 days of the effective date of this decision, San Diego Gas & Electric Company shall pay TURN \$6,298.75 and Southern California Gas Company shall pay \$290,539.64. Payment of the award shall include interest at the rate earned on prime, three-month commercial paper as reported in Federal Reserve Statistical Release H.15, beginning on the 75th day after the filing date of TURN's request for compensation, and continuing until full payment is made.

3. The comment period for today's decision is waived.

4. This proceeding remains open for Phase 2 and other requests for compensation.

This order is effective today.

Dated August 25, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners

Compensation Decision Summary Information

Compensation Decision:	D0508016
Contribution Decision(s):	D0412015
Proceeding(s):	A0212027 et al.
Author:	ALJ Long
Payer(s):	San Diego Gas & Electric Company and Southern California Gas Company

Intervenor Information

Intervenor	Claim Date	Amount Requested	Amount Awarded	Multiplier?	Reason Change/Disallowance
The Utility Reform Network (TURN)	2/7/05	\$296,838.39	\$296,838.39	No	NA

Advocate Information

First Name	Last Name	Type	Intervenor	Hourly Fee Requested	Year Hourly Fee Requested	Hourly Fee Adopted
Marcel	Hawiger	Attorney	TURN	\$250	2003	\$250
Marcel	Hawiger	Attorney	TURN	\$270	2004	\$270
Marcel	Hawiger	Attorney	TURN	\$270	2005	\$270
Hayley	Goodson	Attorney	TURN	\$190	2003	\$190
Hayley	Goodson	Attorney	TURN	\$190	2004	\$190
Robert	Finkelstein	Attorney	TURN	\$365	2003	\$365
Robert	Finkelstein	Attorney	TURN	\$395	2004	\$395
Robert	Finkelstein	Attorney	TURN	\$395	2005	\$395
Daniel	Edington	Attorney	TURN	\$190	2003	\$190
Michel	Florio	Attorney	TURN	\$435	2003	\$435
Mathew	Freedman	Attorney	TURN	\$250	2003	\$250
William	Marcus	Expert	TURN	\$175	2002	\$175
William	Marcus	Expert	TURN	\$185	2003	\$185
William	Marcus	Expert	TURN	\$195	2004	\$195
Gayatri	Schilberg	Expert	TURN	\$140	2003	\$140
Jeffrey	Nahigian	Expert	TURN	\$125	2003	\$125